In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 943

VADA SKAGGS, PETITIONER

v.

UNITED STATES OF AMERICA, EX REL. TENNESSEE VALLEY AUTHORITY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Section 25 of the Tennessee Valley Authority Act, 16 U.S.C. 831x, provides that just compensation for property condemned by TVA shall be determined by commissioners appointed by the district court, and that

> Either or both parties may file exceptions to the award of said commissioners within twenty days from the date of the filing of said award in court.

On November 15, 1961, the commissioners appointed by the district court filed their award for a transmission

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line easement with the clerk of the court.[1] Notification of the filing of the commissioners' award was sent immediately by the clerk to counsel for petitioner and was received by him on the day following the filing. Petitioner did not file her exceptions to the award until December 6, 1961, 21 days after the award was filed.

The court below was correct in holding that the filing of the award with the clerk was "filing * * * in court" within the meaning of Section 25 of the TVA Act, 16 U.S.C. 831x;[2] that, since the 20-day period for filing exceptions to such an award is fixed by the statute itself rather than by court rule or order, it is a limitation not subject to enlargement by subsection (b) or (e) of Rule 6 of the Federal Rules of Civil Procedure;[3] and that exceptions filed more than 20 days after the filing of the commissioners' award accordingly were out of time.

In any event, Rule 6(b) permits *nunc pro tunc* enlargement after the specified time period has run only

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[1] This was in conformity with the court's direction that the commissioners report their award "to the Court or to the Clerk of this Court" within three months.

[2] See *In re Gubelman*, 10 F. 2d 926 (C.A. 2); *Kahler-Ellis Co.* v. *Ohio Turnpike Comm'n*, 225 F. 2d 922 (C.A. 6). See also Rule 5(e) of the Federal Rules of Civil Procedure; *Williams* v. *Todman*, 367 F. 2d 1009, 1012 (C.A. 3). Petitioner cites no authority for her contention to the contrary.

[3] *Matton Co.* v. *Murphy*, 319 U.S. 412; *George* v. *Victor Co.*, 293 U.S. 377; *United States* v. *Sherwood*, 312 U.S. 584; *Ewing* v. *Risher*, 176 F. 2d 641 (C.A. 10); *Schlink* v. *Chesapeake & O. Ry. Co.*, 276 F. 2d 116 (C.A. 6); *Robinson* v. *Celebrezze*, 237 F. Supp. 115 (E.D. Tenn.); *Army and Air Force Exchange Service* v. *Hanson*, 250 F. Supp. 857 (D. Hawaii); *Youngson* v. *Lusk*, 96 F. Supp. 285 (D. Neb.); *Lusk* v. *Lyon Metal Products*, 9 F.R.D. 250 (W.D. Mo.).

upon a showing that failure to file timely was the result of "excusable neglect." Here, however, the district court, in the exercise of its discretion, found "no sufficient cause for the delay * * *" (Pet. App. 24). Rule 6(e) provides an additional three days to take action when action must be taken after service, if the service is made by mail. The time for filing exceptions, however, is specified by the statute to run from the filing of the award, and not from service of notice of the award.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice.
ROBERT H. MARQUIS,
General Counsel,
JAMES H. ELDRIDGE,
Attorney,
Tennessee Valley Authority.

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